

would not be just and equitable if contributions pursuant to this Section 6.6(c) were to be determined by *pro rata* allocation or by any other method of allocation which does not take into account the equitable considerations referred to in the preceding sentences of this Section 6.6(c). The amount paid or payable by an indemnified party as a result of the Claims referred to above shall be deemed to include (subject to the limitations set forth in Section 6.7) any legal or other fees or expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action, proceeding or claim. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

Section 6.7 Indemnification Procedures.

(a) If an indemnified party shall desire to assert any claim for indemnification provided for under Section 6.6 in respect of, arising out of or involving a Claim against the indemnified party, such indemnified party shall notify the Company or the Stockholder, as the case may be (the “Indemnifying Party”), in writing of such Claim, the amount or the estimated amount of Damages sought thereunder to the extent then ascertainable (which estimate shall not be conclusive of the final amount of such Claim), any other remedy sought thereunder, any relevant time constraints relating thereto and, to the extent practicable, any other material details pertaining thereto (a “Claim Notice”) promptly after receipt by such indemnified party of written notice of the Claim; provided, however, that failure to provide a Claim Notice shall not affect the indemnification obligations provided hereunder except to the extent the Indemnifying Party shall have been materially prejudiced as a result of such failure. The indemnified party shall deliver to the Indemnifying Party, promptly after the indemnified party’s receipt thereof, copies of all notices and documents (including court papers) received by the indemnified party relating to the Claim; provided, however, that failure to provide any such copies shall not affect the indemnification obligations provided hereunder except to the extent the Indemnifying Party shall have been materially prejudiced as a result of such failure.

(b) If a Claim is made against an indemnified party, the Indemnifying Party will be entitled to participate in the defense thereof and, if it so chooses and acknowledges without reservation its obligation to indemnify the indemnified party therefore, to assume the defense thereof with separate counsel selected by the Indemnifying Party and reasonably satisfactory to the indemnified party. Should the Indemnifying Party so elect to assume the defense of a Claim, the Indemnifying Party will not be liable to the indemnified party for legal expenses subsequently incurred by the indemnified party in connection with the defense thereof, unless the Claim involves potential conflicts of interest or substantially different defenses for the indemnified party and the Indemnifying Party. If the Indemnifying Party assumes such defense, the indemnified party shall have the right to participate in defense thereof and to employ counsel, at its own expense (except as provided in the immediately preceding sentence), separate from the counsel employed by the Indemnifying Party. The Indemnifying Party shall be liable for the fees and expenses of counsel employed by the indemnified party for any period during which the Indemnifying Party has not assumed the defense thereof and as otherwise contemplated by the two immediately preceding sentences. If the Indemnifying Party chooses to defend any Claim, the other party shall cooperate in the defense or prosecution thereof. Such cooperation shall include the retention and (upon the Indemnifying Party’s request) the provision to the Indemnifying Party of records and information that are reasonably relevant to such Claim, and

use reasonable efforts to make employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Whether or not the Indemnifying Party shall have assumed the defense of a Claim, the indemnified party shall not admit any liability with respect to, or settle, compromise or discharge, such Claim without the Indemnifying Party's prior written consent (which consent shall not be unreasonably withheld or delayed). The Indemnifying Party may pay, settle or compromise a Claim without the written consent of the indemnified party, so long as such settlement includes (i) an unconditional release of the indemnified party from all liability in respect of such Claim, (ii) does not subject the indemnified party to any injunctive relief or other equitable remedy, and (iii) does not include a statement or admission of fault, culpability or failure to act by or on behalf of any indemnified party.

ARTICLE VII

NON-COMPETITION

Section 7.1 Non-Competition. The Stockholder agrees that for the period commencing at the Closing and expiring on the later of (a) the second anniversary of the Closing and (b) the date that is one year after the first date on which the Stockholder ceases to Beneficially Own shares representing less than the applicable Ownership Threshold or ceases to have a right to designate a Stockholder Designee or successor thereto on the Board (a) (including because the Stockholder has unilaterally irrevocably relinquished its right to appoint such designee), neither it nor any of its Affiliates shall, either directly or indirectly, alone or with others, (i) engage in the Business, (ii) act as a reseller, agent or distributor in the United States for anyone engaged, directly or indirectly, alone or with others, in the Business, (iii) act as a mobile virtual network operator in the United States (each of (i), (ii) and (iii), a "Competing Business"), (iv) own an interest in (whether as a stockholder, member or partner, but in each case excluding any such interest not exceeding 5% of any class of security), or manage, operate, or control, or participate in or be connected with as a director, any Person engaged in a Competing Business (other than the Company and its Affiliates), or (v) manufacture, market or distribute, or allow the manufacturing, marketing or distributing of, any products or services under, or use in any way, the Business Marks in the United States in connection with the Business, other than by the Company and its Affiliates in accordance with the terms of the Acquisition Agreement (or any license agreements entered into pursuant to Section 4.21 or Section 4.22 of the Acquisition Agreement); provided that, notwithstanding the foregoing, for three years after the closing of the Acquisition, neither the Stockholder nor its Subsidiaries shall sell, market or provide products or services to customers in the United States under the name "T-Mobile"; provided, further, that the foregoing shall not prohibit (x) customers of the Stockholder and its Affiliates outside of the United States from receiving roaming services in the United States or (y) businesses of Seller or its Subsidiaries (other than the Company and its Subsidiaries) that are located outside of the United States and are, as of the date hereof, engaging in activities described in the definition of Business with customers in the United States, from continuing to engage in such activities, provided, that such products and services are not direct substitutes for wireless voice and data services. If the final judgment of a court of competent jurisdiction declares that any term or provision of this Section 7.1 is invalid or unenforceable, the parties hereto agree that the court making the determination of invalidity or unenforceability will have the power to and shall reduce the scope, duration, or area of the term or provision, to delete specific words or phrases,

or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement will be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Termination. Except with respect to obligations set forth in Sections 3.2 and 7.1, which shall survive the termination of this Agreement, upon the consummation of a sale of all or substantially all of the Company's assets or any tender or exchange offer, merger (other than a merger by the Company to effect a reorganization or recapitalization) or consolidation or any similar transaction in which each holder of Purchaser Shares (other than, if applicable, the Person proposing such transaction) disposes of all Common Stock Beneficially Owned by each such holder or that otherwise results in the acquisition of all (but not less than all) Purchaser Shares Beneficially Owned by each such holder, this Agreement shall terminate and be of no further force and effect. In addition, this Agreement shall terminate and be of no further force and effect if the Acquisition Agreement shall terminate prior to the Closing.

Section 8.2 Injunctive Relief. Each party hereto acknowledges that it would be impossible to determine the amount of damages that would result from any breach of any of the provisions of this Agreement and that the remedy at law for any breach, or threatened breach, of any of such provisions would likely be inadequate and, accordingly, agrees that the other party shall, in addition to any other rights or remedies which it may have, be entitled to such equitable and injunctive relief as may be available from any court of competent jurisdiction to compel specific performance of, or restrain any party from violating, any of such provisions. In connection with any action or proceeding for injunctive relief, each party hereto hereby waives the claim or defense that a remedy at law alone is adequate and agrees, to the maximum extent permitted by law, to have each provision of this Agreement specifically enforced against it, without the necessity of posting bond or other security against it, and consents to the entry of injunctive relief against it enjoining or restraining any breach or threatened breach of such provisions of this Agreement.

Section 8.3 Assignments. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, legal representatives and permitted assigns. Except as contemplated by Section 5.1(b)(ii), neither party may directly or indirectly assign any of its rights or delegate any of its obligations under this Agreement, by operation of law or otherwise, without the prior written consent of the other party; provided that the foregoing shall not prohibit any such assignment in connection with a change in control of the Stockholder. Any purported direct or indirect assignment in violation of this Section 8.3 shall be null and void *ab initio*.

Section 8.4 Amendments; Waiver. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by (i) the Company, where enforcement of the amendment, modification,

discharge or waiver is sought against the Company or (ii) the Stockholder, where enforcement of the amendment, modification, discharge or waiver is sought against the Stockholder. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the party granting such waiver in any other respect or at any other time. The waiver by the Company or the Stockholder of a breach of or a default under any of the provisions of this Agreement or to exercise any right or privilege hereunder, shall not be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. The rights and remedies herein provided are cumulative and none is exclusive of any other, or of any rights or remedies that any party may otherwise have at law or in equity.

Section 8.5 Notices. Any notice, request, instruction or other document to be given hereunder by any party to the others shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service, (b) sent by facsimile with confirmation of transmission by the transmitting equipment, or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case, to the following addresses or facsimile numbers and marked to the attention of the person (by name or title) designated below, or to such other persons or addresses as may be designated in writing by the party to receive such notice as provided below:

To the Company:

AT&T Inc.
One AT&T Plaza
208 S. Akard Street, Suite 3702
Telephone: (214) 757-3300
Fax: (214) 746-2103
Attention: D. Wayne Watts

With copies to:

Joseph B. Frumkin
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4101
Fax: (212) 558-3588

and:

Eric M. Krautheimer
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, California 90067
Telephone: (310) 712-6678
Fax: (310) 712-8800

To the Stockholder:

Deutsche Telekom AG
Friedrich-Ebert-Alle 140
53113 Bonn, Germany
Fax: +49-228-181-74008
Attention: General Counsel

With a copy to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Fax: (212) 403-2000
Attention: Adam O. Emmerich
Steven A. Cohen

Section 8.6 Governing Law; Submission to Jurisdiction; Selection of Forum; Waiver of Trial by Jury. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THEREOF. Each party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement or the transactions contained in or contemplated by this Agreement, exclusively in the United States District Court for the District of Delaware or the Chancery Court of the State of Delaware (the “Chosen Courts”) and, solely in connection with claims arising under this Agreement or the transactions that are the subject of this Agreement Agreements, (a) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (b) waives any objection to laying venue in any such action or proceeding in the Chosen Courts, (c) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party hereto, and (d) agrees that service of process upon such party in any such action or proceeding shall be effective if notice is given in accordance with Section 8.5. Each party hereto irrevocably designates C.T. Corporation as its agent and attorney-in-fact for the acceptance of service of process and making an appearance on its behalf in any such claim or proceeding and for the taking of all such acts as may be necessary or appropriate in order to confer jurisdiction over it before the Chosen Courts and each party hereto stipulates that such consent and appointment is irrevocable and coupled with an interest. Each party hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 8.7 Interpretation. The table of contents and headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

Section 8.8 Entire Agreement; No Other Representations. Except for the Acquisition Agreement, this Agreement constitutes the entire agreement, and supersedes all prior agreements, understandings representations and warranties both written and oral, between the parties with respect to the subject matter hereof.

Section 8.9 No Third-Party Beneficiaries. Except as explicitly provided for in Sections 6.6 and 6.7, this Agreement is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.


Section 8.10 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision; and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 8.11 Counterparts. This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

Section 8.12 Effectiveness. This Agreement shall become effective as of the Closing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective authorized officers as of the date first written above.

AT&T INC.

By: 
Name: Randall Stephenson
Title: Chairman of the Board,
Chief Executive Officer
and President

DEUTSCHE TELEKOM AG

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties have caused this Agreement to be
duly executed by their respective authorized officers as of the date first written above.

AT&T INC.

By: _____
Name:
Title:

DEUTSCHE TELEKOM AG

By: [Signature] - CEO
Name:
Title:

By: [Signature] - CFO
Name:
Title:

[Begin Confidential Information]

[End Confidential Information]

EXECUTION VERSION

STOCK PURCHASE AGREEMENT

by and between

DEUTSCHE TELEKOM AG

and

AT&T INC.

Dated as of March 20, 2011

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STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT (this “Agreement”), dated as of March 20, 2011, by and between DEUTSCHE TELEKOM AG, an *Aktiengesellschaft* organized and existing under the laws of the Federal Republic of Germany (“Seller”), and AT&T INC., a Delaware corporation (“Purchaser”).

RECITALS

WHEREAS, Seller owns all of the issued and outstanding shares of capital stock of T-Mobile Global Zwischenholding GmbH, a *Gesellschaft mit beschränkter Haftung* organized and existing under the laws of Germany (“Global”), which owns all of the issued and outstanding shares of capital stock of T-Mobile Global Holding GmbH, a *Gesellschaft mit beschränkter Haftung* organized and existing under the laws of Germany (“Holding”), which owns all of the issued and outstanding shares of capital stock of T-Mobile USA, Inc. (the “Company”), a Delaware corporation;

WHEREAS, Seller desires to cause Holding to sell to Purchaser and Purchaser desires to purchase from Holding all of the issued and outstanding shares of capital stock of the Company upon the terms and subject to the conditions set forth herein; and

WHEREAS, concurrently with the execution of this Agreement, and as a condition and inducement to Purchaser’s willingness to enter into this Agreement, Seller and Purchaser are entering into a stockholder’s agreement, in respect of the Purchaser Shares, dated as of the date hereof, and attached as Exhibit A (the “Stockholder’s Agreement”).

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I **Definitions and Terms**

1.1. Definitions. As used in this Agreement the following terms shall have the following respective meanings:

“Affiliate” shall mean with respect to any Person, a Person that directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person.

“Agreement” shall have the meaning set forth in the Preamble.

“Applicable Accounting Principles” shall have the meaning set forth in Section 2.3(a).

“Assumed Employees” shall have the meaning set forth in Section 4.14(a).

“Average Adjusted Closing Price” means a dollar amount equal to (i) if the Average Trading Price is greater than \$26.0165 and less than \$30.2354, then the Average Trading Price; (ii) if the Average Trading Price is greater than or equal to \$30.2354, then \$30.2354; or (iii) if the Average Trading Price is equal to or less than \$26.0165, then \$26.0165.

“Average Trading Price” means the volume-weighted average of the per share trading prices of Purchaser Common Stock as reported through Bloomberg (based on all trades in Purchaser Common Stock and not an average of daily averages) for the 30 consecutive full trading days ending on the third Business Day prior to the Closing.

“Beneficially Own” shall mean, with respect to any securities, (i) having “beneficial ownership” of such securities for purposes of Rule 13d-3 or 13d-5 under the Exchange Act (or any successor statute or regulation), (ii) having the right to become the Beneficial Owner of such securities (whether such right is exercisable immediately or only after the passage of time or the occurrence of conditions) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise or (iii) having an exercise or conversion privilege or a settlement payment or mechanism with respect to any option, warrant, convertible security, stock appreciation, swap agreement or other security, contract right or derivative position, whether or not currently exercisable, at a price related to the value of the securities for which Beneficial Ownership is being determined or a value determined in whole or part with reference to, or derived in whole or in part from, the value of the securities for which Beneficial Ownership is being determined that increases in value as the value of the securities for which Beneficial Ownership is being determined increases or that provides to the holder an opportunity, directly or indirectly, to profit or share in any profit derived from any increase in the value of the securities for which Beneficial Ownership is being determined (excluding any interests, rights, options or other securities set forth in Rule 16a-1(c)(1)-(5) or (7) promulgated pursuant to the Exchange Act).

“Benefit Plans” shall have the meaning set forth in Section 3.2(g)(i).

“Business” shall mean the business of marketing, selling and providing wireless telecommunication services (including voice and data services), and all services ancillary thereto, in the United States.

“Business Day” shall mean any day other than a Saturday, a Sunday, a federal holiday or a day on which banks in the City of New York or in Frankfurt, Germany are authorized or obligated by Law to close.

“Business Marks” means the Trademarks owned by or licensed to Seller or its Subsidiaries (other than the Company and its Subsidiaries) that are used by the Company or any

of its Subsidiaries in connection with the Business, including the Trademarks set forth on the list delivered pursuant to Section 4.2(a)(iii).

“Cash Consideration” shall have the meaning set forth in Section 2.2(a).

“Cash Election” shall have the meaning set forth in Section 2.2(c).

“Chosen Courts” shall have the meaning set forth in Section 8.3.

“CMA” shall have the meaning set forth in Annex B.

“Closing” shall have the meaning set forth in Section 2.4.

“Closing Date” shall have the meaning set forth in Section 2.4.

“Closing Discharged Indebtedness” shall have the meaning set forth in Section 2.3(a).

“Closing Statement” shall have the meaning set forth in Section 2.3(b).

“Closing Statement Dispute Notice” shall have the meaning set forth in Section 2.3(c).

“Code” shall have the meaning set forth in Section 3.2(g)(ii).

“Communications Act” shall have the meaning set forth in Section 3.2(d)(i).

“Communications Licenses” shall have the meaning set forth in Section 3.2(h)(ii).

“Company” shall have the meaning set forth in the Recitals.

“Company Common Stock” shall have the meaning set forth in Section 3.2(b)(i).

“Company Contracts” shall mean agreements, leases, licenses, contracts, notes, mortgages, indentures, arrangements or other obligations binding upon the Company or any of its Subsidiaries.

“Company Material Adverse Effect” shall mean (i) an effect that would prevent the ability of Seller to consummate the Transaction or (ii) a material adverse effect on the financial condition, properties, assets, liabilities, business or results of operations of the Company and its Subsidiaries, taken as a whole, excluding any such effect to the extent resulting from (A) changes or conditions (including political and legal conditions) generally affecting (x) the U.S. or global economy or financial, debt, credit or securities markets or (y) the United States mobile wireless voice and data industry; (B) declared or undeclared acts of war, terrorism, outbreaks or escalations of hostilities, sabotage or civil strife; (C) weather-related conditions; (D) any change in GAAP or applicable Laws or regulatory or enforcement developments except to the extent such change disproportionately affects the Company and its Subsidiaries, taken as a

whole, relative to other companies in the U.S. mobile wireless voice and data industry; (E) the failure by the Company to meet any estimates of revenues or earnings for any period ending on or after the date hereof; provided, that the exception in this clause (E) shall not prevent or otherwise affect a determination that any change, effect, circumstance or development underlying such decline has resulted in or contributed to a Company Material Adverse Effect; or (F) matters that were primarily the result of the pendency, announcement, or public disclosure of this Agreement and the transactions contemplated hereby, but excluding any such effect arising through breach of this Agreement or misconduct by Seller or the Company or any of their Affiliates. Any determination of “Company Material Adverse Effect” shall exclude the effects of (i) the matters disclosed in the Seller Disclosure Letter or the Financial Statements and (ii) the effects of any restrictions, limitations or conditions that by the terms of this Agreement are taken into account in determining the existence of a Regulatory Material Adverse Condition.

“Company Shares” shall mean all of the issued and outstanding shares of capital stock or Equity Interests of the Company.

“Confidentiality Agreement” shall mean the confidentiality agreements, dated December 2010, between AT&T Services, Inc. and the Company.

“Control” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Damages” shall have the meaning set forth in Section 6.2(a).

“De Minimis Amount” shall have the meaning set forth in Section 6.4(a)(ii).

“Direct Claim” shall have the meaning set forth in Section 6.3(c).

“Direct Claim Notice” shall have the meaning set forth in Section 6.3(c).

“Disputed Item” shall have the meaning set forth in Section 2.3(c).

“Divested Market Amount” shall mean an amount equal to the product of (i) the aggregate number of Subscribers for Market Divestitures as set forth with respect to each applicable Market on the Subscriber List and (ii) the amount set forth on Annex A.

“Divested Spectrum Amount” shall mean the sum of (i) all First Tier Divested Spectrum Amounts, plus (ii) all Second Tier Divested Spectrum Amounts.

“Divestiture Disputes” shall have the meaning set forth in Section 2.3(h)(i).

“Divestiture Adjustment Amount” shall mean an amount equal to (i) the Divestitures Amount minus (ii) \$3,900,000,000.00; provided, that (x) if the result of (i) minus (ii) is a negative number, the Divestiture Adjustment Amount shall be deemed to be \$0, and (y) in no event will the Divestiture Adjustment Amount exceed \$3,900,000,000.00.

“Divestiture Sale” shall mean a Market Divestiture or Spectrum Divestiture.

“Divestitures Amount” shall mean an amount equal to (i) the Divested Market Amount plus (ii) the Divested Spectrum Amount.

“EC Merger Regulation” shall have the meaning set forth in Section 3.2(d).

“Encumbrance” (including, with correlative meaning, the term “Encumber”) shall mean any lien, pledge, charge, claim, encumbrance, security interest, option, lease, license, mortgage, easement or other restriction or third-party right of any kind, including any right of first refusal or restriction on voting, in each case other than pursuant to the Stockholder’s Agreement.

“Environmental Law” shall mean any applicable Law relating to (i) the protection of the environment (including air, water, soil and natural resources) or (ii) the use, storage, handling, release or disposal of any Hazardous Substance or waste, in each case as presently in effect.

“Equity Interests” shall mean (i) any capital stock of a corporation, any partnership interest, any limited liability company interest or any other equity interest; (ii) any security or right convertible into, exchangeable for, or evidencing the right to subscribe for, any such stock, equity interest or security referred to in clause (i); (iii) any stock appreciation right, contingent value right or similar security or right that is derivative of any such stock, equity interest or security referred to in clause (i) or (ii); and (iv) any contract to grant, issue, award, convey or sell any of the foregoing.

“ERISA” shall have the meaning set forth in Section 3.2(g)(i).

“ERISA Affiliate” means any entity that would be considered a single employer with the Company under Section 4001(b) of ERISA or a member of a group of entities which includes the Company for purposes of Section 414(b), (c), (m) or (o) of the Code.

“Estimated Closing Free Cash Flow Adjustment Amount” shall have the meaning set forth in Section 2.3(a)(i).

“Estimated Closing Discharged Indebtedness” shall have the meaning set forth in Section 2.3(a)(i).

“Estimated Divestiture Adjustment Amount” shall have the meaning set forth in Section 2.3(a)(ii).

“Estimated Purchaser Closing Statement” shall have the meaning set forth in Section 2.3(a)(ii).

“Estimated Seller Closing Statement” shall have the meaning set forth in Section 2.3(a)(i).

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Excluded Liabilities” shall mean the Liabilities of the Company and its Subsidiaries as of the Closing Date that (i) did not arise, directly or indirectly, out of or in connection with the assets used in, or the operations of, the Business (including products, services, assets and operations ancillary thereto) as conducted at any time prior to the Closing Date, (ii) did not become Liabilities prior to June 1, 2001 and (iii) are not reflected in the Financial Statements or in the Seller Disclosure Letter.

“FAA” shall have the meaning set forth in Section 3.2(h)(ii).

“FAA Rules” shall have the meaning set forth in Section 3.2(h)(v).

“FCC” shall have the meaning set forth in Section 3.2(d)(i).

“FCC Licenses” shall have the meaning set forth in Section 3.2(h)(ii).

“FCC Rules” shall have the meaning set forth in Section 4.9(a).

“Final Order” shall have the meaning set forth in Section 5.2(c).

“Financial Statements” shall have the meaning set forth in Section 3.2(e)(i).

“First Tier Divested Spectrum Amount” shall mean, for each Spectrum Divestiture, an amount equal to the product of (i) the number of MHz POPs to be divested in such Spectrum Divestiture, (ii) the corresponding dollar value per MHz POP for the applicable CMA of the divested MHz POPs as set forth in Column 2 of Annex B, and (iii) the First Tier Divestiture Ratio.

“First Tier Divestiture Ratio” shall mean the quotient obtained by dividing 2.5 billion by the total number of MHz POPs to be divested in all Spectrum Divestitures; provided, that if such quotient is greater than 1.0, the First Tier Divestiture Ratio shall be 1.0.

“Free Cash Flow” in respect of a period means the consolidated net income of the Company and its Subsidiaries for such period, plus (i) any depreciation and amortization and (ii) any other non-cash charges deducted in determining such consolidated net income, less, but in each case only to the extent not already deducted in the computation of such consolidated net income, (A) to the extent included in such consolidated net income, amounts in respect of sales of assets outside the ordinary course of business, (B) all capital expenditures and amounts paid for spectrum made during such period, (C) payments made with respect to any Indebtedness during such period, and (D) other cash payments made, but not taken into account in determining the consolidated net income of the Company and its Subsidiaries for such period, all determined in accordance with the Applicable Accounting Principles, and using the line items set forth on Schedule 2.3(a)(I) of the Seller Disclosure Letter.

“Free Cash Flow Adjustment Amount” shall mean an amount equal to (i) the lesser of (A) the sum of (I) the product of the number of full calendar months elapsed from the date hereof through the Closing and \$150,000,000.00, plus (II) the product of the number of days in any partial month between the date hereof and the day prior to the Closing, divided by 30.5 (which amount may not be greater than 2), multiplied by \$150,000,000.00, reduced, but not below zero, by (III) the Spending Deficiency, and (B) the Free Cash Flow from the date hereof until the day prior to the Closing Date, reduced, but not below zero, by the Spending Deficiency, minus an amount equal to (ii) the excess, if any, of (A) the value of all cash and other distributions by the Company to Seller and its Subsidiaries from the date hereof until the Closing in respect of Free Cash Flow, over (B) all cash contributions by Seller or any of its Affiliates (other than the Company and its Subsidiaries) (other than any contributions that constitute Indebtedness) to the Company or any of its Subsidiaries, and provided that the amount in clause (ii)(A) shall not include any payments or distributions by the Company to Seller and its Subsidiaries from the date hereof until the Closing Date in respect of Intercompany Contracts or Indebtedness, in each case paid in accordance with prior practice and the terms disclosed to Purchaser prior to the date hereof.

“Fundamental Purchaser Representations” shall have the meaning set forth in Section 6.1(a).

“Fundamental Seller Representations” shall have the meaning set forth in Section 6.1(a).

“GAAP” shall mean U.S. generally accepted accounting principles.

“Global” shall have the meaning set forth in the Recitals.

“Governmental Consents” shall mean all notices, reports and other filings required to be made prior to the Closing by Seller or Purchaser or any of their respective Subsidiaries with, and all consents, registrations, approvals, permits, clearances and authorizations required to be obtained prior to the Closing by Seller or Purchaser or any of their respective Subsidiaries from, any Governmental Entity in connection with the execution and delivery of this Agreement and the consummation of the Transaction.

“Governmental Entity” shall have the meaning set forth in Section 3.2(d)(i).

“Hazardous Substance” shall mean any substance that is (i) listed, classified or regulated pursuant to any Environmental Law; (ii) any petroleum product or by-product, asbestos-containing material, lead-containing paint or plumbing, polychlorinated biphenyls, mold, radioactive material or radon; and (iii) any other substance which may be the subject of regulatory action by any Governmental Entity in connection with any Environmental Law.

“Holding” shall have the meaning set forth in the Recitals.

“HSR Act” shall have the meaning set forth in Section 3.2(d)(i).

“Indebtedness” shall mean (i) all liabilities for borrowed money, whether current or funded, secured or unsecured, all obligations evidenced by bonds, debentures, notes or similar instruments, and all liabilities in respect of mandatorily redeemable or purchasable capital stock or securities convertible into capital stock; (ii) all liabilities for the principal amount of the deferred and unpaid purchase price of real property and equipment that have been delivered; (iii) all liabilities in respect of any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which liabilities are required to be classified and accounted for under GAAP as capital leases; (iv) all liabilities for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction securing obligations of a type described in clauses (i), (ii) or (iii) above to the extent of the obligation secured; and (v) all liabilities as guarantor of obligations of any other Person of a type described in clauses (i), (ii), (iii) or (iv) above, to the extent of the obligation guaranteed.

“Indemnifying Party” shall have the meaning set forth in Section 6.3(a).

“Independent Accountant” shall mean a certified public accountant satisfactory to Purchaser and Seller; provided, that if Purchaser and Seller do not appoint an Independent Accountant within 10 days after either Purchaser or Seller gives notice to the other of a request therefor, either of them may request the American Arbitration Association to appoint as the Independent Accountant a partner in the New York office of a nationally recognized independent registered public accounting firm based on its determination that the partner has had no material relationships with the parties or their respective Affiliates within the preceding two years and taking into account such firm’s material relationships during the preceding two years with the parties and their respective Affiliates, and such appointment shall be final, binding and conclusive on Purchaser and Seller.

“Insurance Policies” shall have the meaning set forth in Section 3.2(j).

“Intellectual Property” shall mean all rights in intellectual property of any type throughout the world, including the following: (i) all trademarks, service marks, brand names, product names and slogans, certification marks, collective marks, d/b/a’s, assumed names, Internet domain names, logos, symbols, trade dress, trade names and any and every other form of trade identity and other indicia of origin, all applications and registrations therefor and renewals thereof and all goodwill associated therewith and symbolized thereby (“Trademarks”); (ii) all inventions and discoveries, whether or not reduced to practice, patents, including utility patents and design patents, industrial designs and utility models, invention disclosures, all applications and registrations for the foregoing, including reissues, divisionals, continuations, continuations-in-part, supplementary protection certificates, extensions, reexaminations, renewals thereof, and any counterparts (foreign or otherwise) claiming priority therefrom which priority may be claimed, and all inventions disclosed therein and improvements thereto (“Patents”); (iii) proprietary and confidential information, trade secrets and know-how, including processes, schematics, business methods, formulae, drawings, research and development, prototypes, models, designs, customer lists and supplier lists, all other confidential or proprietary technical, business and other information and all rights in any jurisdiction to limit the use or disclosure thereof (“Trade Secrets”); (iv) published and unpublished works of authorship (including

databases and other compilations of information, mask works and Software), the copyrights therein and thereto and all registrations and applications therefor and renewals, extensions, restorations and reversions thereof; and (v) all other intellectual property, industrial or similar proprietary rights recognized under any jurisdiction worldwide.

“Intellectual Property Contracts” shall have the meaning set forth in Section 3.2(o)(i)(K).

“Intercompany Contracts” shall mean all Company Contracts between the Company or one or more of its Subsidiaries, on the one hand, and Seller or one or more of its Subsidiaries (other than the Company and its Subsidiaries), on the other hand.

“Intercompany Indebtedness” shall mean any Indebtedness for borrowed money that immediately prior to the Closing would be owed by the Company or one of its Subsidiaries to Seller or one of its Subsidiaries (other than the Company and its Subsidiaries) or by Seller or one of its Subsidiaries (other than the Company and its Subsidiaries) to the Company or one of its Subsidiaries.

“IRS” shall have the meaning set forth in Section 3.2(g)(ii).

“IT Assets” shall mean computers, Software, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines and all other information technology equipment, and all documentation associated therewith.

“Knowledge of the Company” shall mean the actual knowledge of the Persons listed on Schedule 1.1 of the Seller Disclosure Letter.

“Laws” shall have the meaning set forth in Section 3.2(h)(i).

“Leased Real Property” shall mean all real property leased or subleased by the Company and its Subsidiaries.

“Liabilities” means any and all debts, liabilities, commitments and obligations of any kind, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not accrued, asserted or not asserted, known or unknown, determined, determinable or otherwise, whenever or however arising (including, whether arising out of any contract or tort based on negligence or strict liability) and whether or not the same would be required by GAAP to be reflected in financial statements or disclosed in the notes thereto.

“Licensed Parties” shall have the meaning set forth in Section 4.21.

“Licenses” shall have the meaning set forth in Section 3.2(h).

“Market” shall mean each of the counties in the United States as set forth on Annex C.

“Market Divestiture” shall mean the sale, transfer or other divestiture of assets, including Equity Interests, required by, or agreed to with, any Governmental Entity in connection with obtaining a Governmental Consent, which results in the sale, transfer or other disposition of Licenses for wireless spectrum, network assets, systems, customers and/or other assets in the Market or Markets that are the subject of the divestiture of a geographic area designation established by the FCC (e.g., BTA or CMA) in a manner that amounts to an effective exit of the Company from serving its wireless customers in such Market or Markets.

“Market Divestiture Proceeds Percentage” shall mean the percentage that (i) the Divestiture Adjustment Amount represents of (ii) the amount equal to the product of (A) 2.0 and (B) the Divestitures Amount.

“Material Adverse Amount” shall mean \$7,800,000,000.00.

“Material Contracts” shall have the meaning set forth in Section 3.2(o)(i).

“Material Licenses” shall have the meaning set forth in Section 3.2(h).

“MHz POPs” with respect to any FCC License shall mean the number of megahertz of wireless spectrum covered by such FCC Licenses multiplied by the population in the geographic area covered by such FCC License, directly derived from the amounts set forth in Annex C.

“Monthly Financial Statements” shall have the meaning set forth in Section 4.2(a)(vi).

“NYSE” shall mean the New York Stock Exchange.

“Order” shall have the meaning set forth in Section 5.1(b).

“Organizational Documents” shall mean, with respect to any Person, such Person’s articles or certificate of association, incorporation, formation or organization, by-laws, limited liability company agreement, partnership agreement or other constituent document or documents, each in its currently effective form as amended from time to time.

“Owned Intellectual Property” shall have the meaning set forth in Section 3.2(n)(i).

“Owned Real Property” shall mean all real property owned in fee by the Company and its Subsidiaries.

“Patents” shall have the meaning set forth in the definition of “Intellectual Property.”

“Permitted Encumbrances” shall mean (i) Encumbrances specifically reflected or specifically reserved against or otherwise specifically disclosed in the Financial Statements;

(ii) mechanics', materialmen's, warehousemen's, carriers', workers' or repairmen's liens or other common law or statutory Encumbrances arising or incurred in the ordinary course consistent with past practice and that are not material in amount or effect on the business of the Company and its Subsidiaries; (iii) liens for Taxes, assessments and other governmental charges not yet due and payable or due but not delinquent or being contested in good faith by appropriate proceedings; (iv) with respect to real property, (A) easements, quasi-easements, licenses, covenants, rights-of-way, rights of re-entry or other similar restrictions, including any other agreements, conditions or restrictions that would be shown by a current title report or other similar report or listing, (B) any conditions that may be shown by a current survey or physical inspection, and (C) zoning, building, subdivision or other similar requirements or restrictions; and (v) Encumbrances that would not impair the conduct of the business of the Company and its Subsidiaries, or the use or value of the relevant asset.

"Person" shall mean any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or nature.

"Potential Sale Interest" shall have the meaning set forth in Section 4.20.

"Pre-Closing Period" means any taxable period (or portions thereof) that, with respect to the Company or any of its Subsidiaries, ends on or before the Closing Date.

"Pre-Closing Taxes" means any Taxes imposed on the Company or any of its Subsidiaries with respect to a Pre-Closing Period. In the case of any taxable period that, with respect to the Company or any of its Subsidiaries, includes but does not end on the Closing Date, (i) property Taxes of the Company and its Subsidiaries allocable to the Pre-Closing Period shall be equal to the amount of such property Taxes for the entire taxable period multiplied by a fraction, the numerator of which is the number of calendar days during the Pre-Closing Period and the denominator of which is the number of calendar days in the entire taxable period, and (ii) Taxes (other than property Taxes) of the Company and its Subsidiaries allocable to the Pre-Closing Period shall be computed as if such taxable period ended as of the end of the day on the Closing Date; provided, that exemptions, allowances or deductions that are calculated on an annual basis shall be allocated to the Pre-Closing Period in the same proportion as the number of calendar days during the Pre-Closing Period bears to the number of calendar days in the entire taxable period.

"PUCs" shall have the meaning set forth in Section 3.2(d)(i).

"Purchase Price" shall have the meaning set forth in Section 2.2(b).

"Purchaser" shall have the meaning set forth in the Preamble.

"Purchaser Cap" shall have the meaning set forth in this Section 6.4(b).

"Purchaser Common Stock" shall have the meaning set forth in Section 2.2(b).